

## Defense Acquisition Regulations System, DoD

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AUTHORITY: 41 U.S.C. 1303 and 48 CFR chapter 1.

SOURCE: 56 FR 36447, July 31, 1991, unless otherwise noted.

### Subpart 244.1—General

#### 244.101 Definitions.

As used in this subpart—

*Acceptable purchasing system* and *purchasing system* are defined in the clause at 252.244–7001, Contractor Purchasing System Administration.

*Significant deficiency* is defined in the clause at 252.244–7001, Contractor Purchasing System Administration.

[76 FR 28871, May 18, 2011]

### Subpart 244.2—Consent to Subcontracts

#### 244.201 Consent and advance notification requirements.

[78 FR 69272, Nov. 18, 2013]

##### 244.201–1 Consent requirements.

In all solicitations and contracts involving the development or delivery of any information technology, whether acquired as a service or as a supply, consider the need for a consent to subcontract requirement regarding supply chain risk (see subpart 239.73).

##### 244.202 Contracting officer's evaluation.

##### 244.202–2 Considerations.

- (a) Where other than lowest price is the basis for subcontractor selection, has the contractor adequately substan-

tiated the selection as offering the greatest value to the Government?

[60 FR 29501, June 5, 1995]

### Subpart 244.3—Contractors' Purchasing Systems Reviews

#### 244.301 Objective.

The administrative contracting officer (ACO) is solely responsible for initiating reviews of the contractor's purchasing systems, but other organizations may request that the ACO initiate such reviews.

[70 FR 67922, Nov. 9, 2005]

#### 244.303 Extent of review.

(a) Also review the adequacy of rationale documenting commercial item determinations to ensure compliance with the definition of "commercial item" in FAR 2.101.

(b) Also review the adequacy of the contractor's counterfeit electronic part detection and avoidance system under clause 252.246–7007, Contractor Counterfeit Electronic Part Detection and Avoidance System.

[67 FR 38023, May 31, 2002, as amended at 79 FR 26106, May 6, 2014]

#### 244.305 Granting, withholding, or withdrawing approval.

#### 244.305–70 Policy.

Use this subsection instead of FAR 44.305–2(c) and 44.305–3(b).

(a) The cognizant contracting officer, in consultation with the purchasing system analyst or auditor, shall—

- (1) Determine the acceptability of the contractor's purchasing system and approve or disapprove the system; and
- (2) Pursue correction of any deficiencies.

(b) In evaluating the acceptability of the contractor's purchasing system, the contracting officer, in consultation with the purchasing system analyst or auditor, shall determine whether the contractor's purchasing system complies with the system criteria for an acceptable purchasing system as prescribed in the clause at 252.244–7001, Contractor Purchasing System Administration.

(c) *Disposition of findings*—(1) *Reporting of findings*. The purchasing system

analyst or auditor shall document findings and recommendations in a report to the contracting officer. If the auditor or purchasing system analyst identifies any significant purchasing system deficiencies, the report shall describe the deficiencies in sufficient detail to allow the contracting officer to understand the deficiencies.

(2) *Initial determination.* (i) The contracting officer shall review all findings and recommendations and, if there are no significant deficiencies, shall promptly notify the contractor that the contractor's purchasing system is acceptable and approved; or

(ii) If the contracting officer finds that there are one or more significant deficiencies (as defined in the clause at 252.244-7001, Contractor Purchasing System Administration) due to the contractor's failure to meet one or more of the purchasing system criteria in the clause at 252.244-7001, the contracting officer shall—

(A) Promptly make an initial written determination on any significant deficiencies and notify the contractor, in writing, providing a description of each significant deficiency in sufficient detail to allow the contractor to understand the deficiency;

(B) Request the contractor to respond, in writing, to the initial determination within 30 days; and

(C) Evaluate the contractor's response to the initial determination in consultation with the auditor or purchasing system analyst, and make a final determination.

(3) *Final determination.* (i) The contracting officer shall make a final determination and notify the contractor, in writing, that—

(A) The contractor's purchasing system is acceptable and approved, and no significant deficiencies remain, or

(B) Significant deficiencies remain. The notice shall identify any remaining significant deficiencies, and indicate the adequacy of any proposed or completed corrective action. The contracting officer shall—

(1) Request that the contractor, within 45 days of receipt of the final determination, either correct the deficiencies or submit an acceptable corrective action plan showing milestones

and actions to eliminate the deficiencies;

(2) Disapprove the system in accordance with the clause at 252.244-7001, Contractor Purchasing System Administration; and

(3) Withhold payments in accordance with the clause at 252.242-7005, Contractor Business Systems, if the clause is included in the contract.

(ii) Follow the procedures relating to monitoring a contractor's corrective action and the correction of significant deficiencies in PGI 244.305-70.

(d) *System approval.* The contracting officer shall promptly approve a previously disapproved purchasing system and notify the contractor when the contracting officer determines that there are no remaining significant deficiencies.

(e) *Contracting officer notifications.* The cognizant contracting officer shall promptly distribute copies of a determination to approve a system, disapprove a system and withhold payments, or approve a previously disapproved system and release withheld payments to the auditor; payment office; affected contracting officers at the buying activities; and cognizant contracting officers in contract administration activities.

(f) *Mitigating the risk of purchasing system deficiencies on specific proposals.*

(1) Source selection evaluation teams shall discuss identified purchasing system deficiencies and their impact in all reports on contractor proposals until the deficiencies are resolved.

(2) The contracting officer responsible for negotiation of a proposal generated by a purchasing system with an identified deficiency shall evaluate whether the deficiency impacts the negotiations. If it does not, the contracting officer should proceed with negotiations. If it does, the contracting officer should consider other alternatives, *e.g.*—

(i) Allowing the contractor additional time to correct the purchasing system deficiency and submit a corrected proposal;

(ii) Considering another type of contract, *e.g.*, a fixed-price incentive (firm target) contract instead of firm-fixed-price;

(iii) Using additional cost analysis techniques to determine the reasonableness of the cost elements affected by the purchasing system's deficiency;

(iv) Segregating the questionable areas as a cost-reimbursable line item;

(v) Reducing the negotiation objective for profit or fee; or

(vi) Including a contract (reopener) clause that provides for adjustment of the contract amount after award.

(3) The contracting officer who incorporates a reopener clause into the contract is responsible for negotiating price adjustments required by the clause. Any reopener clause necessitated by a purchasing system deficiency should—

(i) Clearly identify the amounts and items that are in question at the time of negotiation;

(ii) Indicate a specific time or subsequent event by which the contractor will submit a supplemental proposal, including certified cost or pricing data, identifying the cost impact adjustment necessitated by the deficient purchasing system;

(iii) Provide for the contracting officer to adjust the contract price unilaterally if the contractor fails to submit the supplemental proposal; and

(iv) Provide that failure of the Government and the contractor to agree to the price adjustment shall be a dispute under the Disputes clause.

[76 FR 28871, May 18, 2011, as amended at 77 FR 11366, Feb. 24, 2012]

#### **244.305-71 Contract clause.**

Use the Contractor Purchasing System Administration basic clause or its alternate as follows:

(a) Use the clause at 252.244-7001, Contractor Purchasing System Administration—Basic, in solicitations and contracts containing the clause at FAR 52.244-2, Subcontracts.

(b) Use the clause at 252.244-7001, Contractor Purchasing System Administration—Alternate I, in solicitations and contracts that contain the clause at 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System, but do not contain FAR 52.244-2, Subcontracts.

[79 FR 26106, May 6, 2014]

### **Subpart 244.4—Subcontracts for Commercial Items and Commercial Components**

#### **244.402 Policy requirements.**

(a) Contractors shall determine whether a particular subcontract item meets the definition of a commercial item. This requirement does not affect the contracting officer's responsibilities or determinations made under FAR 15.403-1(c)(3). Contractors are expected to exercise reasonable business judgment in making such determinations, consistent with the guidelines for conducting market research in FAR part 10.

[67 FR 38023, May 31, 2002]

#### **244.403 Contract clause.**

Use the clause at 252.244-7000, Subcontracts for Commercial Items, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items.

[78 FR 37989, June 25, 2013]

## **PART 245—GOVERNMENT PROPERTY**

### **Subpart 245.1—General**

Sec.

245.101 Definitions.

245.102 Policy.

245.103-70 Furnishing Government property to contractors.

245.103-71 Transferring Government property accountability.

245.103-72 Government-furnished property attachments to solicitations and awards.

245.103-73 Contracting office responsibilities.

245.104 Responsibility and liability for Government property.

245.105 Contractor's property management system compliance.

245.107 Contract clause.

### **Subpart 245.2—Solicitation and Evaluation Procedures**

245.201 Solicitation.

245.201-70 Definitions.

245.201-71 Security classification.